

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUAH MCCAIVITT,
Petitioner,
v.
PATRICK COVELLO,
Respondent.

No. 2:22-cv-01926 KJM KJN P

ORDER

Petitioner, a state prisoner proceeding pro se, filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 12, 2022, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. F&R, ECF No. 10. Petitioner filed objections to the findings and recommendations and asked this court to reject the magistrate judge's findings and recommendations, or, in the alternative, grant petitioner "an opportunity to amend his petition." Obj. at 5, ECF No. 13. Amendment in this case would be futile, so the court denies this request. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir.2008). Petitioner cannot amend his claim challenging a state court's application of state sentencing laws to state a cognizable federal claim. *See* F&R at 3–4. Additionally, petitioner

1 cannot amend his complaint to show the state court's alleged error was "so arbitrary or capricious
2 as to constitute an independent due process [violation]." *Richmond v. Lewis*, 506 U.S. 40, 50
3 (1992); *see also* F&R at 4.


4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
5 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the
6 findings and recommendations to be supported by the record and by the proper analysis.

7 Accordingly, IT IS HEREBY ORDERED:

- 8 1. The findings and recommendations filed December 12, 2022, are adopted in full;
- 9 2. The petition is dismissed with prejudice; and
- 10 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.

11 § 2253.

12 DATED: March 22, 2023.

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15 CHIEF UNITED STATES DISTRICT JUDGE
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